

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
NURSING HOME (NH) STANDARD ADVISORY COMMITTEE (SAC) MEETING**

Wednesday, August 22, 2007

Capitol View Building
201 Townsend Street
MDCH Conference Center
Lansing, Michigan 48913

APPROVED MINUTES

I. Call To Order

Chairperson Chalgian called the meeting to order at 9:03 a.m.

A. Members Present:

Diane H. Baker, Blue Cross Blue Shield of Michigan
James Branscum, Vice-Chairperson, Health Care Association of Michigan
Bart J. Carrel, Borgess Health
Douglas Chalgian, Chairperson, Alzheimer's Association
Thomas E. Czerwinski, Area Agencies on Aging Association of Michigan
Marge Faville, SEIU
Alison E. Hirschel, Michigan Poverty Law Program
Sarah Slocum, Michigan Long Term Care Ombudsman (Arrived @ 9:12 a.m.)
Susan C. Steinke, Michigan Quality Community Care Council

B. Members Absent:

Renee Beniak, Michigan County Medical Care Facilities Council
James P. Bowe, Michigan Association of Homes & Services for the Aging
Priscilla Mazurek, RN, University of Michigan Health System

C. Michigan Department of Community Health Staff Present:

Umbrin Ateequi
Bill Hart
John Hubinger
Joette Laseur
Irma Lopez
Andrea Moore
Brenda Rogers
Taleitha Pytlowanyj

II. Declaration of Conflicts of Interests

There were no conflicts stated at this time.

III. Review of Agenda

Motion by Ms. Steinke, seconded by Ms. Faville, to accept the agenda as presented. Motion Carried.

IV. Review of Minutes – July 25, 2007

Motion by Vice-Chairperson Branscum, seconded by Ms. Steinke, to approve the minutes as presented. Motion Carried.

V. Quality Measures

Chairperson Chalgian took a poll of the Committee as to whether or not the results of the nursing home surveys should be utilized to measure quality. Seven members voted yes, and 2 members voted no.

The Committee decided that Vice-Chairperson Branscum and Ms. Slocum would work together to write some possible draft language regarding quality measures. Things to consider: utilize nursing home survey results, number of citations per facility vs. severity, meet a higher bar to initiate, consider ownership, and utilize Medicaid levels as the floor. Ms. Hirschel and Ms. Laseur volunteered to help Branscum/Slocum. Discussion followed.

Chairperson Chalgian polled the Committee as to whether citations should be given by number per facility or pro-rated per bed. Five members voted per facility and 4 members voted per bed.

The Committee asked the Department for data on what the average number of deficiencies is at 100 bed facilities and at the 200 level (50 bed increments).

Public Comment

Mark Mailloux, University of Michigan
Pat Anderson, Healthcare Association of Michigan

Break from 10:21 a.m. to 10:37 a.m.

VI. Addendum for New Design Model Pilot Program

Motion by Vice-Chairperson Branscum, seconded by Mr. Carrel, to make the Addendum for New Design Model Pilot Program a permanent addendum to the Standards.

Ms. Moore clarified that the Branscum/Carrel Motion affects only the timeframe of the New Design Model. If the Motion passes, the New Design Model can still be up for discussion and modification. Discussion followed.

Branscum/Carrel Motion. Motion Carried.

VII. Definitions and Methodologies

Motion by Vice-Chairperson Branscum, seconded by Ms. Steinke, to have Wayne County be considered one planning area instead of three separate planning areas in the Standards.

Chairperson Chalgian and Vice-Chairperson Branscum discussed the letter (Attachment A) that was presented to them at the beginning of the meeting and distributed to the Committee. Discussion followed.

Motion by Chairperson Chalgian, seconded by Ms. Faville, to table the Branscum/Steinke Motion until the next meeting. Motion Carried.

Ms. Slocum will make some contacts for the next meeting to receive input from facilities in Wayne County.

Public Comment

Kasra Zarbinian, Michigan Department of Community Health Engineering

VIII. Long-Term Care Policies and Regulations

There is nothing to report at this time.

VII. Definitions and Methodologies Continued

Chairperson Chalgian discussed the Sunset letter (Attachment B). The Committee decided to wait until next meeting to discuss the letter. Discussion followed.

IX. Next Steps

At the September 26 meeting, the Committee will hear a report from the members working on the draft language regarding quality measures. Also, the Committee will look at the Sunset letter, the letter regarding Jackson County, the methodology, high occupancy, and special population groups.

X. Future Meeting Dates:

September 26
October 18
November 8
November 28

Ms. Moore reviewed Section 9 of the Standards with the Committee. Mr. Carrel, Vice-Chairperson Branscum, Ms. Steinke, and Ms. Laseur volunteered to work together to look at Comparative Review.

XI. Public Comment

Phyllis Adams, Dykema
Steve Zuiderveen, Brookcrest

XII. Adjournment

Motion by Ms. Faville, seconded by Mr. Czerwinski, to adjourn the meeting at 12:17 p.m. Motion Carried.

August 17, 2007

State of Michigan
Department of Community Health - Certificate of Need Program
Lewis Cass Building, 320 S. Walnut Street
Lansing, MI 48913

ATTN: Long Term Commission Standards Advisory Committee

Dear Committee members:

We represent a local group of concern citizens and health/human service agency Leadership from Jackson County. Recently Jackson County experienced a closure of a large long term care facility resulting in a current long term care bed capacity crisis of 150 beds. As a result of the facility closure, 60+ individuals were moved out of the County because their needs could no be met locally.

We are providing this information because our local discussion and problem solving resulted in this group being directed to you to address concerns we have identified with the Nursing Home Long Term Care Unit Bed Standards. When seeking clarification from the Department of Community Health, they advise that no immediate relief or changes could be made due to the nature of rules already promulgated. They did, however advise that the standards were currently in their cycle for three-year review.

The following is an attempt to clarify our concerns and to offer improvements to the existing standards. When possible, we have aligned our feedback with your charge and clarified the related standards of concern.

1. Consider inclusion of quality measures – We have no specific recommendations related to this charge.
2. Review the Addendum for Special Population Group Beds – We concur with others who have recommended that persons with psychiatric conditions should be given consideration under these standards. We would also include persons with behavioral problems that may be due to a Mental Health Diagnosis, Dementia, or Alzheimer's disease. Agencies and families involved in seeking appropriate placements for individuals with these conditions experience a high rate of refusal, locally. The provider that was recently closed was one of the few places that could be routinely relied on to meet the needs of the more severely

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ill, and disabled individuals with co-occurring behavioral health challenges. As a result of the lack of willing capacity, many individuals with these conditions end up being placed in other counties far away from their families and natural supports.

3. Review the Addendum for New Design Model – We do not have specific recommendations but feel there should be a clear charge to promote alternative models. Our experience locally is that there has been a significant shift in the use of long term capacity toward rehabilitation and long term care. Again, this leaves individuals with specific long term needs without a viable local option. We believe expanded use of alternate models could address this concern.
4. Review the high occupancy provision – We have no specific recommendations related to this charge.
5. Review definitions and methodologies, and examine other options – We specifically request that the committee review the scoring methodology for :
 - a. Calculating corresponding use rate (Section 3(2)(b)). The current standard states that patient days and population cohort in determining local need. This suggests to us that local patient days may not accurately determine need if a community is using out-of-county placements, and having those patient days included in alternate communities assessment. We would request that the standards be revised to make the assessment of need inclusive of patient days for persons placed outside their county of residence.
 - b. Section 10 outlines the standards for comparative review. While part of this standard –(2)(a)-(c) – provides scoring weight to facilities based on Medicaid patient days, Medicaid admissions, and Medicaid certification, we have come to learn that the majority of providers in our area are reporting their performance in this area for persons who are dual eligible (Medicare and Medicaid). While this is perfectly allowable under the current rule, we have found that the admission rate of these providers is largely predicated on the patient's Medicare eligibility and that these providers are, in fact, excluding persons on straight Medicaid, citing the low reimbursement rate. We would propose that the weighting be modified to specifically provide for additional points for Medicaid patient days and admissions for persons who have no other coverage.

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6. Review Long-term Care policies and regulations of the State within the context of the CON scope and authority. - We have no specific recommendations related to this charge.

We respectfully request your consideration of these recommendations. If you have additional questions, please feel free to contact Nancy Miller, LifeWays' Chief Executive Officer. Ms. Miller also serves as the facilitator of the Long Term Care Planning & Problem Solving Committee. Ms. Miller can be reached by calling (517) 789-1208.

Sincerely,

*Senator Mark Schauer
 Representative Mike Simpson
 Nancy Miller, MS, LBSW, CEO, LifeWays
 Shelia Gomez, Wendy Hockley, Matt Murphy - Foote Health Systems
 Linda Carr LifeWays OBRA Coordinator
 Shelly Saines The Jackson County Community Foundation
 Willye Pigott, Jackson Public Schools
 Brenna M. Wheeler, Central Michigan 2-1-1 Manager
 Center for Family Health
 Edward Woods, Business Representative, Jackson HSCA
 disAbility Connections, Inc.
 Jackson County Department of Human Services
 Jackson County Guardian Office
 Mid-South Substance Abuse Commission
 United Way of Jackson County
 Marc M. Stanley, J.D., Southeastern Dispute Resolution Services, Community Action Agency
 Victoria J. Webster, Vice President and Chief Operating Officer, CareLink of Jackson*



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July 23, 2007

Mr. Douglas G. Chalgian, Esq.
Chair, Certificate of Need Standard
Advisory Committee for Nursing Homes
Chalgian & Tripp Law Offices PLLC
139 W Lake Lansing Rd., Suite 200
East Lansing, Michigan 48823

RE: Dual Certification of Medicare Certified Nursing Home Beds

Dear Mr. Chalgian:

This letter is written on behalf of the Elder Law and Disability Rights Section of the State Bar of Michigan. As elder law attorneys, many members of our Section are closely involved in assisting long-term care patients with care and placement issues. This letter is to request the Department's assistance in resolving one of the perennial problems facing patients, their families, and their counsel: Facilities with "distinct part certification" that demand removal of Medicaid-eligible patients from Medicare beds at the termination of their Medicare SNF eligibility. Discharge practices that primarily serve the financial interests of the nursing home, rather than the well-being of the residents, are facilitated by distinct part certification where Medicare beds are not also Medicaid-certified.

One of the most important protections federal law affords a long-term care patient is equal access to quality care, despite source of payment. According to Medicare regulation, "A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment." 42 CFR § 483.12(c)(1). Facilities that have Medicare beds that are not Medicaid-certified present an equal-access problem for Medicare patients who become eligible for Medicaid. The patient and the patient's family are often urged by the nursing home's administration to find another facility because of a claim that all the Medicaid beds are filled and there is a waiting list.

Mr. Douglas G. Chalgian
Chair, Certificate of Need Standard
Advisory Committee for Nursing Homes
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Many patients are moved by their families without a challenge when they are told that there is no Medicaid bed available. This is very disruptive to the patient's care and places additional stress on the patient and family. It is also unfair to families that cannot afford the assistance of an attorney or that do not know that an attorney can help them contest a proposed discharge. Facilities nearly always back down when families refuse to move the patient and contest an involuntary discharge, especially if the family is assisted by counsel. Therefore, the consequences of this oppressive behavior falls most heavily on the least financially secure and most vulnerable populations.

The legislature recognized this problem and enacted a requirement that every Medicare-certified bed in a nursing facility must be also certified for Medicaid. The statute provides as follows:

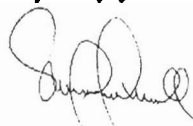
[A]s a condition of skilled nursing facility certification and participation in [Medicare], a nursing home shall be concurrently certified for and give evidence of active participation in [Medicaid]. A nursing facility that is not concurrently certified for [Medicaid] shall make application for concurrent certification not later than its next application for licensure and certification. A failure to make application shall result in the skilled nursing facility being decertified or refused certification as a provider in [Medicare]. Nursing home or nursing care facility participation in [Medicaid] under the requirements for concurrent certification shall be effective not later than the beginning of the first accounting year following the home's or facility's [Medicaid] certification.

As a condition of skilled nursing facility certification, a nursing home shall obtain concurrent certification under [Medicaid] for each bed that is certified to provide skilled care under [Medicare]. Skilled care certification shall not be renewed unless the requirements of this subsection are met. MCL § 333.21718.

Unfortunately, there are many Michigan nursing homes that do not follow the requirements of MCL § 333.21718. This is not merely a failure to adhere to an administrative requirement. Patients are suffering due to unnecessary discharges to other facilities. Continuing to permit facilities to flout the requirement to certify all Medicare beds for Medicaid wrongly encourages a multi-tiered system of facilities. Sub-standard facilities do not have to improve their level of care to attract patients, since they can absorb the Medicaid patient spill-off from partially-certified skilled nursing facilities.

The Elder Law and Disability Rights Section of the State Bar of Michigan urges the Department's active enforcement of MCL § 333.21718. The negative consequences of this failure to enforce the dual-certification mandate are heartbreaking to our clients who must deal with these circumstances far too often. We request that nursing facility inspection and certification protocols and practices be amended to include review of Medicare bed certification to require that all Medicare-certified beds adhere to dual-certification requirements set forth in MCL § 333.21718. We welcome the opportunity to discuss these concerns with you in greater detail informally thereby avoiding the need for advocates to seek other forms of relief.

Very truly yours,



Sanford J. Mall
Chairperson, Elder Law & Disability Rights Section
State Bar of Michigan